

CHAPTER NO. 58

HOUSE BILL NO. 717

By Representatives Rhinehart, Head, Ridgeway

Substituted for: Senate Bill No. 892

By Senator Atchley

AN ACT to amend Tennessee Code Annotated, Section 8-27-205(b)(2); Section 8-27-302(d)(3); Section 8-34-101(34); Section 8-34-206(d); Section 8-34-302(a)(10); Section 8-35-403(d)(2); Section 8-35-404; Section 8-36-108(b)(5); Section 8-36-109; Section 8-36-117; Section 8-36-123(b); Section 8-36-501(a); Section 8-36-501(c)(1); Section 8-36-502(c); 8-36-604; 8-36-607 and 8-37-220(a); and Title 8, Chapter 25, Parts 1 and 3, and Title 8, Chapter 36, Part 8 relative to pensions, insurance and deferred or tax-sheltered compensation programs for public officers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-27-205(b)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2) "Years of service", as used in this subsection, means only those years of service rendered by the retiree as a state employee, as such term is defined in § 8-27-201(g), or as a teacher as defined in § 8-34-101(46), and upon which the retiree's monthly retirement allowance is based.

SECTION 2. Tennessee Code Annotated, Section 8-27-302(d)(3), is amended by deleting the same in its entirety and by substituting instead the following:

(3) "Years of service", as used in this subsection, means only those years of service rendered by the retiree as a teacher, as is defined in § 8-34-101(46), or as a state employee, as is defined in § 8-27-201(g), and upon which the retiree's monthly retirement allowance is based.

SECTION 3. Tennessee Code Annotated, Section 8-34-101(34), is amended by adding the following new sentences at the end thereof:

If the entire monthly retirement allowance is ten dollars (\$10.00) or more per month but less than fifty dollars (\$50.00) per month, it shall be paid in a lump sum of equivalent actuarial value unless the member files with the retirement division an election to receive the benefit in equal monthly installments pursuant to this subdivision. To be effective, the member must file the election by no later than thirty (30) calendar days after the member's receipt of the lump sum payment and the member must return any such payment to the retirement division. Notwithstanding any provision of this subdivision to the contrary, if the retirement allowance payable to any person who became a member of the retirement system on or after July 1, 2001 is ten dollars (\$10.00) or more per month but less than fifty dollars (\$50.00) per month, it shall be paid in a lump sum of equivalent actuarial value.

SECTION 4. Tennessee Code Annotated, Section 8-34-206(d), is amended by deleting the last two sentences thereof in their entirety.

SECTION 5. Tennessee Code Annotated, Section 8-34-302(a)(10), is amended by deleting the words and figures "who shall serve for a term of two (2) years" and by substituting instead the words and figures "who shall serve for a term of three (3) years".

SECTION 6. Tennessee Code Annotated, Section 8-35-403(d)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2) Any such election shall become effective no later than the first day of the month following thirty (30) days' written notice to the retirement division and to the institution where the employee is employed. Such notification shall be made on the election forms prescribed in subsection (b) of this section.

SECTION 7. Tennessee Code Annotated, Section 8-35-404, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) (1) If a participant has separated from service and has an aggregate total of less than five thousand dollars (\$5,000) credited to such participant's retirement accounts, the contributions shall be distributed to the participant, upon the participant's written request therefor, in any manner permitted by the companies holding the accounts. This aggregate total shall be increased by one thousand dollars (\$1,000.00) on January 1, 2002 and on each January 1 thereafter until the aggregate total distribution equals fifteen thousand dollars (\$15,000.00).

(2) If a participant has separated from service and is receiving social security disability benefits from the social security administration on account of a disability suffered by the participant, the participant may, upon the participant's written request, receive a limited lump sum distribution from the participant's accounts each year. For the calendar year 2001, the aggregate total of each annual distribution from all of the participant's accounts shall not exceed fifteen thousand dollars (\$15,000.00). This aggregate total shall be increased by one thousand dollars (\$1,000.00) each calendar year thereafter until the aggregate total annual distribution equals twenty-five thousand dollars (\$25,000.00). Each annual distribution shall be made in any manner permitted by the companies holding the accounts but only upon receipt by the employer of documentation confirming the participant's continued receipt of social security disability benefits. Once the participant attains the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act (42 U.S.C. §§ 401-425), the participant shall no longer be required to provide such documentation in order to receive an annual distribution pursuant to this subsection.

SECTION 8. Tennessee Code Annotated, Section 8-36-117, is amended by adding the following as a new subsection (b) and by redesignating the existing subsection accordingly:

(b) All monthly benefit payments shall cease in the month in which the payee dies, unless otherwise specifically provided for in chapters 34 – 37 of this title. If the payee was a retired member who did not elect an optional allowance pursuant to § 8-36-601, a monthly benefit payment shall be issued for the month in which the retired member died and shall be payable to the person nominated as beneficiary by the member pursuant to § 8-36-121. If no surviving beneficiary exists upon the retiree's death, the payment shall be made in accordance with § 8-36-120. If the payee was a beneficiary receiving benefits under the terms of an optional allowance, a monthly benefit payment shall be issued for the month in which the beneficiary died and shall be paid in accordance with § 8-36-120.

SECTION 9. Tennessee Code Annotated, Section 8-36-604, is amended by deleting the same in its entirety.

SECTION 10. Tennessee Code Annotated, Section 8-36-607, is amended by deleting the same in its entirety and by substituting instead the following:

For death benefit purposes, a member who dies prior to retirement shall be considered as having been retired on the date death occurs or on the date such member's annual leave is exhausted, whichever is later.

SECTION 11. Tennessee Code Annotated, Section 8-37-220(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) Subject to the conditions set forth in this section, the board of trustees may promulgate substantive and procedural rules to permit members, including retired members, to establish the retirement credit authorized in chapters 34-37 of this title through equal monthly installments over a period not to exceed the number of months of service to be established under the applicable code section. Notwithstanding the preceding sentence, if the number of months of service to be established is more than sixty (60) months but not more than one hundred twenty (120) months, the period of the installments cannot exceed one hundred twenty (120) months. If the number of months of service to be established is more than one hundred twenty (120) months, the period of the installments cannot exceed one hundred eighty (180) months. Any rules promulgated under this section shall set forth the date on which the retirement system may begin accepting monthly installment payments pursuant hereto. Nothing in this section shall be construed to allow a member or retired member to establish retirement credit unless such member otherwise meets all the eligibility requirements to establish the credit.

SECTION 12. Tennessee Code Annotated, Title 8, Chapter 25, Part 1, is amended by adding the following new section:

8-25-110. Production of records described in subpoena.

(a) Except as hereinafter provided, when a subpoena duces tecum is served upon any person or entity administering or providing services to a deferred compensation plan established pursuant to this part in an action or proceeding in which the person or entity is not a party, and such subpoena requires the production of all or any part of the records of the deferred compensation plan relating to a present or former plan participant, it shall be sufficient compliance therewith if the person or entity within fourteen (14) days after being served with a subpoena duces tecum, shall, either by personal delivery or certified or registered mail, file with the court clerk or the issuer, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records specifically described in such subpoena.

(b) The records shall be accompanied by an affidavit of a custodian, stating in substance that:

(1) The affiant is the duly authorized custodian of the records and has authority to certify the records; and

(2) The copy is a true copy of all the records described in the subpoena.

(c) If the person or entity has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner prescribed in this section.

(d) (1) The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit.

(2) The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary.

(3) When more than one (1) person has knowledge of the facts, more than one (1) affidavit may be made.

(e) The personal attendance of the custodian may be commanded only if personal attendance is necessary to resolve a good faith dispute concerning the accuracy of the information to be furnished. Where personal attendance of the custodian is required, the subpoena duces tecum shall contain a clause which reads: "The procedure authorized pursuant to § 8-25-110 will not be deemed sufficient compliance with this subpoena".

SECTION 13. Tennessee Code Annotated, Title 8, Chapter 25, Part 3, is amended by adding the following new section:

8-25-308. Production of records described in subpoena. The provisions of § 8-25-110 shall apply whenever a subpoena duces tecum is served upon any person or entity administering or providing services to a profit sharing and/or salary reduction plan established pursuant to this part.

SECTION 14. Tennessee Code Annotated, Section 8-36-109(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) Upon the death of a member in service who has reached the applicable eligibility requirements for an early or service retirement allowance as set forth in parts 2 or 3 of this chapter, a retirement allowance shall be paid to the member's surviving designated beneficiary, if any.

(1) No benefits shall be payable under this subsection on account of any member on whose account a benefit is payable under any other provision of chapters 34-37 of this title.

(2) The retirement allowance payable to the beneficiary shall be equal to the retirement allowance which would have been payable had the member retired under an effective election of Option 1 as provided in part 6 of this chapter with such person nominated as the beneficiary under the option.

SECTION 15. Tennessee Code Annotated, Section 8-36-109(b)(1), is amended by deleting the words and figures "§ § 8-36-107, 8-36-108 or part 6 of this chapter" and by substituting instead the words and figures "any other provision of chapters 34-37 of this title".

SECTION 16. Tennessee Code Annotated, Section 8-36-109(d)(1), is amended by deleting the words and figures “§ 8-36-108 or part 6 of this chapter” and by substituting instead the words and figures “any other provision of chapters 34-37 of this title”.

SECTION 17. Tennessee Code Annotated, Section 8-36-123(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b) (1) Effective July 1, 1991, a member who does not qualify for a disability retirement allowance under § 8-36-501 or § 8-36-502 and who suffers from a total and permanent disability may be retired by the board of trustees on an ordinary disability retirement allowance provided the following conditions are met:

(A) The member files with the retirement division an application for the retirement allowance on a form prescribed by the retirement division;

(B) Competent medical evidence is provided by the member which conclusively documents that the member is totally and permanently disabled from engaging in any type of substantial gainful activity;

(C) The member has completed the service requirement for such member's classification as set forth in § 8-36-501(b); and

(D) The member does not otherwise qualify for a service retirement allowance as provided for in §§ 8-36- 201 – 8-36-205.

(2) Any member who applies for an ordinary disability retirement allowance pursuant to this subsection shall be subject to the provisions of § § 8-36-503 – 8-36-507.

(3) The amount of the ordinary disability retirement allowance shall be the actuarial equivalent of the retirement allowance which would be payable to the member at fifty-five (55) years of age pursuant to part 3 of this chapter. Notwithstanding the preceding sentence, any allowance payable under this subsection shall be subject to the provisions of §§ 8-36-501(c)(4) – (7).

SECTION 18. Tennessee Code Annotated, Section 8-36-501(a), is amended by

(a) Ordinary Disability Retirement Authorized. Any member who has completed the service requirement for such member's classification as set forth in subsection (b) below and suffers from a total and permanent disability may be retired by the board of trustees on an ordinary disability retirement allowance. Before approval may be granted, the member must file with the retirement division an application for the retirement allowance on a form prescribed by the retirement division. In addition, the member must provide competent medical evidence which conclusively documents that the member is totally and permanently disabled from engaging in any type of substantial gainful activity and that such disability existed at and since the date of the member's separation from service.

SECTION 19. Tennessee Code Annotated, Section 8-36-501(c)(1), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Upon ordinary disability retirement, a member shall receive a service retirement allowance as provided for in §§ 8-36- 201 – 8-36-205 if eligible therefor.

SECTION 20. Tennessee Code Annotated, Section 8-36-502(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) Accidental Disability Retirement Authorized. Upon the application of a member in Group 1 or 2, any such member who has been disabled as the natural and proximate result of an accident or as the direct result of physical violence against the member's own person occurring while the member was in the actual performance of duty at some definite time and place, without negligence on the member's part, may be retired by the board of trustees on an accidental disability retirement allowance. A member shall not be entitled to receive disability retirement benefits under this section unless the member files with the retirement division an application for the benefits within two (2) years of the date of the claimed accident or incident causing such disability or within one (1) year of the member's last paid day of employment, whichever is later. Before approval may be granted, the member must provide competent medical evidence which conclusively documents that the member is totally and permanently disabled from engaging in any type of substantial gainful activity and that such disability occurred while in the actual performance of duty.

SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 22. The provisions of Section 5 of this act shall take effect on July 1, 2001, the public welfare requiring it. All other Sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 29, 2001


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 4th day of April 2001


DON SUNDQUIST, GOVERNOR